
(2010) 07 CAL CK 0072
In the Calcutta High Court
Case No : C.R.R. No. 3036 of 2009

Triranjana Maity

APPELLANT

Vs

Pradip Aich and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 500, 501
Telecom Regulatory Authority of India Act, 1997 — Section 14, 14(A)

Citation : (2010) 07 CAL CK 0072

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Pratima Mishra, for the Appellant; Himangshu De and Ansuman Bera for O.P. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973 is at the instance of one of the accused persons praying for quashing the proceeding being C.R. No. 92 of 2008 under Sections 420/406/120B of the I.P.C. pending before the learned Judicial Magistrate, Mathabhanga, District - Cooch Behar.

2. The short fact leading to filing of this application is that the opposite party No. 1 filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Mathabhanga against the petitioner and other co-accused persons who are made the proforma opposite party Nos. 2 & 3 for offences under Sections 420/406/120B/500/501 of the I.P.C. The opposite party executed an affiliation agreement with M/s. SET Discovery Pvt. Limited now renamed as M/s. MSM Discovery Private Limited for subscription of "the One Alliance" channels in the territory comprising Mathabhanga only on 11.12.2007. The opposite party was required to pay monthly subscription of Rs. 15,000/- for 18 satellite channels and for that purpose he signed the validation form. But actually the

accused persons provided signals for 9 channels. The opposite party requested the accused persons to provide for the rest channels in vain. The opposite party also paid Rs. 13,500/- to the accused No. 1 for 9 decoder boxes. Though the opposite party paid Rs. 15,000/- per month for signals and Rs. 13,500/- per month for decoder boxes, the accused persons stopped signals. Thereafter, the opposite party made several payments to the accused No. 1 as per demand and those payments were made within the knowledge of the other accused persons.

3. The accused persons did not provide any copy of the agreement to the opposite party in spite of repeated request on the part of the opposite party. Thereafter, the accused persons published a defamatory notice involving the business of the opposite party in the newspapers, the Bartaman dated 02.04.2008 and the Telegraph dated 02.04.2008 to lower the prestige and reputation of the complainant. In spite of several payments for providing services of all the channels, the accused persons did not provide the same to the complainant. Rather they published defamatory statements. Then on 27.04.2008 the accused persons suddenly disconnected the signals of 9 channels which they provided to the complainant without assigning any reason. The opposite party No. 1 paid to the accused persons a total sum of Rs. 78,795/- for 18 channels but all the accused persons misappropriated the said money in furtherance of their common intention. They also induced the complainant to make payment of the above amount with a view to misappropriate the same by deceitful means. On the basis of such allegations, the opposite party filed a petition of complaint being C.R. No. 92 of 2008 before the learned Additional Chief Judicial Magistrate, Mathabhanga.

4. That petition of complaint was transferred to the Court of the learned Judicial Magistrate, Mathabhanga. The learned Judicial Magistrate examined the complainant on S.A. and then on being satisfied a prima facie case against the accused persons u/s 420/406/120B of the I.P.C., issued summons upon the accused persons under the aforesaid Sections. Thereafter, the accused Dipankar Ghosh, appeared before the learned Judicial Magistrate. He was granted bail and the complaint case was fixed for service return in respect of the other accused persons. At that stage, one of the accused persons namely, petitioner herein, has filed this application for quashing the said criminal proceeding against him.

5. Mrs. Mishra, learned Advocate appearing on behalf of the petitioner, submits that though the complainant complained of agreement for providing 18 channels, the accused persons provided 9 channels only. Mrs. Mishra draws my attention to the paper dated 11.12.2007 appearing at page 43. Mrs. Mishra also submits that in fact, the transaction was held between the complainant and the accused No. 1, Dipankar Ghosh and the present petitioner had no role in the matter and he has been falsely implicated. She contends that the learned Judicial Magistrate did not apply his mind in considering such fact. She also contends that the dispute between the parties arose out of an agreement which is civil in nature and so remedy of the complainant, if any, lies before the civil forum of competent

authority. She also contends that the transaction between the parties is purely commercial and no criminal case lies because the petitioner had no intention at all to cheat or commit any other offence at the very beginning of the agreement. She also contends that according to the provisions of Sections 14 and 14A of the Telecom Regulatory of India Act, 1997 (henceforth shall be called as "the Act of 1997"), the adjudication of any dispute between a licensor and a licensee may be held by the Appellate Tribunal. She also submits that according to the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulations, 2009 (henceforth shall be called "Regulations of 2009") there must be a written agreement between the parties with regard to the matters of the Regulations of 2009 and the jurisdiction for resolving the dispute lies before the Telecommunication Tribunal and not to any other forum, far too, lodging a criminal case for violation of any agreement.

6. Mr. De, appearing on behalf of the complainant, submits that documents referred to by the petitioner as annexures to his application should not be considered at all, because those are defence documents. Services of the channels could not be stopped in the manner as done by the accused persons though they had taken the charges as per agreement. The learned Magistrate did not commit any wrong in taking cognizance and subsequently issuing process because everything has been done in accordance with law. So, the application should be dismissed.

7. Mrs. Mishra refers to the following decisions in support of her contention:

1. Uma Shankar Gopalika v. State of Bihar and Anr. Reported in (2005) 10 SCC 336.

Mrs. Mishra submits that in case of a breach of contract, if any person is charged with the offence of cheating, it must be proved that the intention to cheat was existing at the very inception of agreement. In the instant case, there is no such ingredient of the intention to cheat on the part of the accused persons.

2. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

Mrs. Mishra has submits that at the time of issuing process against the accused persons, the order of the learned Magistrate must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and evidence both oral and documentary in support of thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused person. She also contends that the Hon" ble High Court can be approached by the accused person when the complaint does not make out a case against him.

3. Chunduri Siya Ram Krishna and Anr. v. Reddi Rabindra Babu and Anr. Reported in AIR 2009 SC 3250.

Mrs. Mishra submitted that unless any specific role of the accused is ascribed and if allegations against the appellants are bald and vague, the proceeding against

the appellants is liable to be quashed.

8. On the other hand, Mr. De, appearing on behalf of the complainant/opposite party No. 1, refers to the following decisions:—

1. Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others,

Mr. De submits that at the stage of issuing process the learned Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there were sufficient grounds for proceeding against the accused. It is not the province of the learned Magistrate to enter into a detailed transaction of the merits or demerits of the case. Nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

2. State of Bihar and Another Vs. P.P. Sharma, IAS and Another,

Mr. De submits that the documents filed by the petitioner as annexures to the writ petition challenging the criminal proceedings against the accused were neither the part of the petition of complaint. So the documents produced by the accused before the High Court along with the writ petitions should not be looked into and considered by the High Court. Appreciation of evidence is the function of the criminal courts. The High Court under the circumstances could not have assumed the jurisdiction and put to an end to the process of investigation and trial provided under the law.

3. Uma Shankar Gopalika v. State of Bihar and Anr. Reported in (2005) 10 SCC 336.

Mr. De also relies upon the aforesaid decision and submits that when the intention to cheat developed at the very inception of the agreement, the learned Magistrate is competent to proceed with the matter. Being satisfied about it, the learned Magistrate issued process. So the application should be dismissed.

9. After hearing the submission of the learned Counsel for both the parties and on perusing the materials on record, I find that the dispute between the parties arose when the parties to the petition of complaint signed the agreement dated 11.12.2007. But the agreement is not forthcoming. The complainant contended that the copy of agreement was not handed over to him. The petitioner has filed one paper appearing at page No. 43 to show agreement. Though the petitioner has filed many papers as annexures to the application, yet, I find that the petitioner has not filed the agreement. It is the specific case of the complainant that the accused persons did not provide for any copy of the agreement to the complainant in spite of the repeated requests. Had such written agreement been produced by the petitioner, the terms and conditions vis-?-vis number of channels to be provided could have been ascertained. The petition of complaint was lodged primarily on the allegation that though there was an agreement of providing services of 18 channels, in fact services of 9 channels were provided. So, prima facie, intention to cheat, an ingredient to offence of cheat appears at

the very beginning of the contract. So the criminal proceeding can well be continued.

10. Sections 14 & 14A of the Act of 1997 clearly lay down that in case of any dispute between a licensor and a licensee the aggrieved person has his remedy by way of making an application to the Appellate Tribunal for adjudication of any dispute referred to in Clause (a) of Section 14. Similarly, the Regulations of 2009 also provide that there must be written agreement between the parties and the jurisdiction to solve the dispute lies before the Telecommunication Tribunal and this is the exclusive jurisdiction of any dispute between the parties arising out of in connection with or as a result of the agreement. Since the dispute between the two parties had arisen out of a written agreement between the two parties to the petition of complaint and the written agreement had been withheld by the accused persons, the dispute between the two parties cannot be stated to be a mere civil dispute. The same fact may also constitute criminal offence. Section 14 and 14A of the Act of 1997 do not debar from proceeding with the criminal case.

11. The decision of *Vir Prakash Sharma v. Anil Kumar Agarwal and Anr.* Reported in (2007) 7 SCC 373 clearly lays down that where the allegations contained in the petition of complaint even if given face value and taken to be correct in its entirety do not disclose an offence, the complaint can be quashed. In the instant complaint case, it will appear that the petition of complaint lays down the ingredients of inducement, cheating, criminal conspiracy, etc. So the criminal case can well proceed. Therefore, the learned Additional Chief Metropolitan Magistrate and the learned Judicial Magistrate were justified in taking cognizance and issuing process against the accused persons respectively, in accordance with law.

12. In view of what has been observed above, I am of the opinion that the application is meritless. It is, therefore, dismissed.

13. Considering the circumstances, there will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.